

**JUDGE COTE**

MICHAEL J. GARCIA

United States Attorney for the  
Southern District of New York

By: JOSEPH N. CORDARO

Assistant United States Attorney

86 Chambers Street, Third Floor

New York, New York 10007

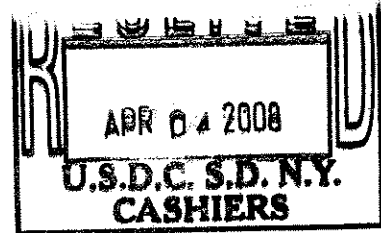
Telephone: (212) 637-2745

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**08 CV 3374**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- x  
WENDY EISERMANN, As Mother and Natural :  
Guardian of J.S., and WENDY EISERMANN, :  
Individually, :

Plaintiffs, :

-against- :

DAVID WALKER, M.D., THE DUTCHESS :  
MEDICAL PRACTICE, P.C., ROBERT :  
DWECK, M.D., and HUDSON RIVER :  
HEALTHCARE CENTERS, :

Defendants. :

----- x

**NOTICE OF REMOVAL**

08 Civ. \_\_\_\_\_

Index No. 8634/2007  
(Supreme Court of the State of  
New York, Dutchess County)

Defendants David Walker, M.D., ("Dr. Walker"), Robert Dweck, M.D. ("Dr. Dweck"), and Hudson River HealthCare, Inc. ("HRH") (collectively, the "Federal Defendants"), by their attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York.

The grounds for removal are as follows:

1. On or about December 20, 2007, plaintiff Wendy Eisermann, individually, and as mother and natural guardian of infant plaintiff J.S. ("Plaintiffs"),<sup>1</sup> filed a complaint in the above-captioned action against the Federal Defendants and The Dutchess Medical Practice, P.C. in the Supreme Court of the State of New York, Dutchess County, under Index Number 8634/2007. A true and correct copy of the summons and complaint is attached as Exhibit A.

2. In July 1994, the Department of Health and Human Services, Health Resources and Services Administration, Bureau of Primary Health Care, deemed HRH, f/k/a Peekskill Area Health Center, Inc., and its employees, including Dr. Walker and Dr. Dweck, to be employees of the United States Government pursuant to section 224 of the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act of 1995, Pub. L. No. 104-73. *See* 42 U.S.C. § 233(g)-(j), (m). That status has continued uninterrupted since that date.

3. The Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 1402(b), 2401(b) and 2671-2680, provides the exclusive remedy with respect to Plaintiffs' claims against the Federal Defendants. *See* 42 U.S.C. § 233(a).

4. This action may be removed to this Court pursuant to 42 U.S.C. § 233(c), and 28 U.S.C. § 2679(d)(2) because: (i) trial has not yet been had of this action; and (ii) this is a civil action brought against parties deemed to be employees of the United States Government for purposes of the FTCA. A true and correct copy of the Certification of Michael J. Garcia, United States Attorney for the Southern District of New York, dated March 28, 2008, certifying that the

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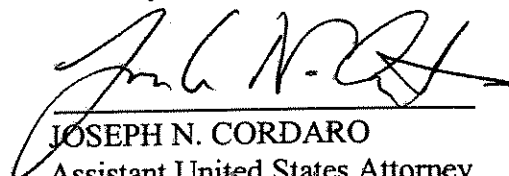
<sup>1</sup> The full name of plaintiff J.S. has been withheld pursuant to Fed. R. Civ. P. 5.2(a)(3).

Federal Defendants are employees of the United States for purpose of Plaintiffs' claims against them, is attached as Exhibit B.

Dated: New York, New York  
April 4, 2008

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York  
Attorney for the Federal Defendants

By:

  
JOSEPH N. CORDARO  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Telephone: (212) 637-2745  
Facsimile: (212) 637-2686  
Email:

To: Eliot M. Wolf, Esq.  
Wolf & Fuhrman, P.C.  
1453 Webster Avenue  
Bronx, New York 10456  
*Attorneys for Plaintiffs*

The Dutchess Medical Practice, P.C.  
3360 Route 343  
Amenia, New York 12501

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

WENDY EISERMANN, As Mother and natural  
guardian of J. S. , and WENDY  
EISERMANN, individually,

Plaintiffs,

-against-

DAVID WALKER, M.D., THE DUTCHESS MEDICAL  
PRACTICE, P.C., ROBERT DWECK, M.D., and  
HUDSON RIVER HEALTHCARE CENTERS,

Defendant

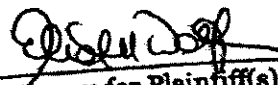
To the above named Defendant(s):

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York  
December 10, 2007

Yours etc.

WOLF & FUHRMAN, P.C.

  
Attorneys for Plaintiff(s)  
BY: ELIOT M. WOLF, ESQ.  
1453 Webster Avenue  
Bronx, New York 10456  
(718) 393-0980

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**Defendant's addresses:**

DAVID WALKER, M.D.  
c/o Dutchess Medical Practice, P.C.  
3360 Route 343  
Amenia, New York, 12501

DUTCHESS MEDICAL PRACTICE, P.C.  
3360 Route 343  
Amenia, New York 12501

ROBERT DWECK, M.D.  
c/o Dutchess Medical Practice, P.C.  
3360 Route 343  
Amenia, New York, 12501

HUDSON RIVER HEALTHCARE CENTERS  
3360 Route 343  
Amenia, New York, 12501

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**REDACTED**

SUPREME COURT OF THE STATE OF NEW YORK  
DUTCHESS COUNTY

-----X  
WENDY EISERMANN, As Mother and natural guardian of  
J. S. and WENDY EISERMANN, individually

Plaintiffs,

INDEX #:

-against-

VERIFIED  
COMPLAINT

DAVID WALKER, M.D., THE DUTCHESS MEDICAL PRACTICE,  
P.C., ROBERT DWECK, M.D., and HUDSON RIVER  
HEALTHCARE CENTERS

Defendants.

-----X  
Plaintiff's by their attorneys WOLF & FUHRMAN allege the following as and for  
their verified complaint all upon information and belief;

1. At all times relevant herein the plaintiffs were residents of the State of  
New York.
2. At all times relevant herein the plaintiffs resided at 32 Merwin Road in  
Millerton, New York.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**FOR MEDICAL MALPRACTICE**

3. At all times relevant herein the Defendant DAVID WALKER, M.D., held  
himself out to the general public as a physician duly licensed in the State of New York to  
render medical care to patients and more specifically the infant plaintiff herein.
4. At all times relevant herein the Defendant, DAVID WALKER, M.D., held

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himself out to the general public as a physician duly competent to render medical care to patients and more specifically to the infant plaintiff herein.

5. At all times relevant herein the Defendant, THE DUTCHESS MEDICAL PRACTICE, P.C. (hereinafter "DUTCHESS") held itself out to the general public as a facility offering competent medical care to pediatric patients and more specifically to the infant plaintiff herein.

6. At all times relevant herein Defendant, "DUTCHESS" was a professional corporation.

7. At all times relevant herein the Defendant "DUTCHESS" employed the Defendant DAVID WALKER, M.D.

8. At all times relevant herein the Defendant "DUTCHESS" employed the Defendant, ROBERT DWECK, M.D.

9. At all times relevant herein the Defendant, ROBERT DWECK, M.D., was a physician duly licensed to practice medicine in the State of New York.

10. At all times relevant herein the Defendant, ROBERT DWECK, M.D., held himself out as Board Certified in the specialty of pediatrics.

11. At all times relevant herein the Defendant, ROBERT DWECK, M.D., held himself out as competent to provide medical care to pediatric patients and more specifically to the infant plaintiff herein.

12. That at all times relevant herein the Defendant, HUDSON RIVER COMMUNITY HEALTH (hereinafter "HRCH"), held itself out as a facility that provided competent medical care to the general public and more specifically to the infant plaintiff herein.

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13. That the infant plaintiff, J[REDACTED] S[REDACTED], was born on February 21, 2003.
14. That the infant plaintiff, J[REDACTED] S[REDACTED], became a patient at the offices of the Defendant "DUTCHESS" on or about March 10, 2003.
15. That the infant plaintiff, J[REDACTED] S[REDACTED], became a patient of Defendant "HRCH" on or about March 10, 2003.
16. That the infant plaintiff, J[REDACTED] S[REDACTED] was treated continuously by Defendant, "DUTCHESS" until on or about May 23, 2007.
17. That the infant plaintiff, J[REDACTED] S[REDACTED], was treated continuously by the Defendant, "HRCH" until on or about May 23, 2007.
18. That the infant plaintiff, J[REDACTED] S[REDACTED] was treated by the Defendant, DAVID WALKER, M.D., from on or about January 26, 2006.
19. That the infant plaintiff, J[REDACTED] S[REDACTED], was treated by the Defendant, DAVID WALKER, M.D., continuously until on or about May 16, 2007.
20. That the infant plaintiff, J[REDACTED] S[REDACTED] was treated by the Defendant, ROBERT DWECK, M.D., on or about May 23, 2005 when enlarged lymph nodes were assessed by said Defendant as "reactive lymphadenopathy".
21. That the care rendered by agents, designees, servants, employees and/or assignees of Defendant "DUTCHESS" deviated from good and accepted standards of medical practice then prevailing.
22. That the care rendered by Defendant, ROBERT DWECK, M.D. was in the course of his employment by Defendant, "DUTCHESS".
23. That the care rendered by Defendant, DAVID WALKER, M.D. was in the



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course of his employment by the Defendant, "DUTCHESS".

24. That the care rendered by Defendant, ROBERT DWECK, M.D., was in the course of his employment by the Defendant, "HRCH".

25. That the care rendered by the Defendant, DAVID WALKER, M.D., was in the course of his employment by the Defendant, "HRCH".

26. That the care rendered by Defendant, DAVID WALKER, M.D., deviated from good and accepted standards of medical practice then prevailing.

27. That the care rendered by Defendant, ROBERT DWECK, M.D., deviated from good and accepted standards of medical practice then prevailing.

28. That the care rendered by the agents, employees, designees, and or assignees of Defendant, "HRCH" deviated from the good and accepted standards of medical care then prevailing.

29. That the infant plaintiff was caused to become sick, sore, lame and disabled as a direct result of the deviations from good and accepted standards of care.

30. That the injuries sustained by the infant plaintiff were caused solely by the negligence and medical malpractice of the Defendants in their departures from good and accepted standards of medical and hospital practice.

31. That the infant plaintiff did not contribute to the injuries he sustained by any action, or lack thereof, on his part.

32. This action falls within one or more of the exceptions of CPLR Article 16.

33.- By reason of the foregoing the infant plaintiff has been damaged by the Defendant s in a sum which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

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AS AND FOR A SECOND CAUSE OF ACTION  
ON BEHALF OF PLAINTIFF, WENDY EISERMANN


34. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "33" as if more fully set forth herein.
35. Plaintiff, WENDY EISERMANN is the mother and natural guardian of the infant plaintiff, J[REDACTED] S[REDACTED].
36. That solely as a result of the acts of the Defendants heretofore alleged, the plaintiff, WENDY EISERMANN has been caused to lose the companionship, society and love of her son, the infant plaintiff herein.

WHEREFORE, Plaintiffs seek judgment on the First, and Second Causes of Action in amounts that exceed the jurisdictional limits of all lower Courts that might otherwise have jurisdiction and for such further and just relief that the Court deem proper.

Dated: December 11, 2007  
Bronx, New York

Yours etc.

WOLF AND FUHRMAN

  
By: ELIOT M. WOLF, ESQ.  
Attorneys for Plaintiff  
1453 Webster Avenue  
Bronx, New York 10456

ax from :

To: DAVID WALKER, M.D.  
3360 Route 343  
P.O. Box 108  
Amenia, New York, 12501

THE DUTCHESS MEDICAL PRACTICE, P.C.  
3360 Route 343  
P.O. Box 108  
Amenia, New York, 12501

ROBERT DWECK, M.D.  
3360 Route 343  
P.O. Box 108  
Amenia, New York, 12501

HUDSON RIVER HEALTHCARE CENTERS  
3360 Route 343  
P.O. Box 108  
Amenia, New York, 12501

Fax from :

**ATTORNEY VERIFICATION:**

**ELIOT M. WOLF, ESQ.**, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the truth of the following under penalty of perjury:

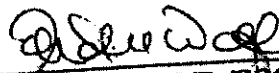
I am a member of the law firm of Wolf & Fuhrman, the attorneys for the plaintiffs, and as such am familiar with the facts and circumstances herein.

I have read the foregoing COMPLAINT, and know the contents thereof to be true to my knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

The grounds of my belief as to those matters stated upon information and belief are as follows: conversations with plaintiff, medical records and investigation reports on file.

The reason this verification is made by me and not the plaintiff personally is because the plaintiff resides outside the county where I maintain my office.

Dated: Bronx, New York  
December 11, 2007

  
**ELIOT M. WOLF, ESQ.**

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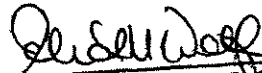
**CERTIFICATE OF MERIT**

STATE OF NEW YORK)  
COUNTY OF BRONX):

ELIOT M. WOLF, ESQ., an attorney duly admitted to practice in  
the Courts of the State of New York, hereby affirms as follows pursuant to  
CPLR 2106:

I have reviewed the facts of this case and consulted with at least one physician  
who is licensed to practice medicine in the State and who I reasonably believe is  
knowledgeable in the relevant issue involved in this action, and I have concluded on the  
basis of such review and consultation that there is a reasonable basis for the  
commencement of this action.

Dated: Bronx, New York  
December 11, 2007

  
**ELIOT M. WOLF, ESQ.**

Fax from :

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☐ NOTICE OF ENTRY  
SIRS: Please take notice that the within is a (certified) true copy of duly entered in the office on the clerk of the within signed court on 20

Dated: Matheus, New York 20

Yours, etc.  
**WOLF & FUHRMAN**

By:  
Attorney(s) for

Office and Post Office Address, Telephone  
1453 Webster Avenue  
Bronx, New York 10456  
(718) 293-0980

To:  
Attorney(s) for

☐ NOTICE OF SETTLEMENT

SIRS: Please take notice that an order of which the within is a true copy will be presented for settlement to the HON. one of the Judges of the within named Court, at on 20 at N

Dated: New York, New York 20

Yours, etc.  
**WOLF & FUHRMAN**

By:  
Attorney(s) for

Office and Post Office Address, Telephone  
1453 Webster Avenue  
Bronx, New York 10456  
(718) 293-0980

To:  
Attorney(s) for

Index No

Year 2007

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

WENDY EISERMANN, as Mother and Natural Guardian of  
S and WENDY EISERMANN, Individually,  
Plaintiffs,

DAVID WALKER, M.D., THE DUTCHESS MEDICAL  
PRACTICE, P.C., ROBERT DWECK, M.D., and HUDSON  
RIVER HEALTHCARE CENTERS,  
Defendants,

VERIFIED SUMMONS AND COMPLAINT

**WOLF & FUHRMAN**  
Attorneys for Plaintiff(s)  
**EISERMANN/S**  
Office and Post Office Address, Telephone  
1453 Webster Avenue  
Bronx, New York 10456  
(718) 293-0980

To:

Attorney(s) for  
Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for  
to the best of my knowledge, information and belief,  
formed after an inquiry, reasonable under the  
circumstances, the presentation of the contents herein  
are not frivolous, as that same is designed in part 130 of  
the Court Rules.  
Dated: Bronx, New York December 11, 2007  
Signature  
Name: **ELTON N. WOLF, ESQ.**



MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York  
By: JOSEPH N. CORDARO  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Telephone: (212) 637-2745  
Facsimile: (212) 637-2686  
Email: joseph.cordaro@usdoj.gov

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

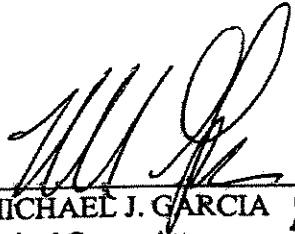
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WENDY EISERMANN, As Mother and Natural	:	08 Civ. _____
Guardian of J.S., and WENDY EISERMANN,	:	
Individually	:	
	:	Dutchess County
Plaintiffs,	:	Index No. 8634/2007
	:	
-against-	:	
	:	<b><u>CERTIFICATION</u></b>
DAVID WALKER, M.D., THE DUTCHESS	:	
MEDICAL PRACTICE, P.C., ROBERT	:	
DWECK, M.D., and HUDSON RIVER	:	
HEALTHCARE CENTERS	:	
	:	
Defendants.	:	
-----	x	

I, MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, pursuant to the provisions of section 224 of the Public Health Service Act, 42 U.S.C. § 233, and 28 U.S.C. § 2679(d), and by virtue of the authority vested in me by the Attorney General under 28 C.F.R. § 15.4(a), hereby certify, on the information now available, that defendants David Walker, M.D., Robert Dweck, M.D., and Hudson River HealthCare, Inc., were acting within the scope of their employment at the time they rendered medical care to infant

REDACTED

plaintiff J. S. and that, pursuant to section 224(g) of the Public Health Service Act, 42 U.S.C. § 233(g), defendants David Walker, M.D., Robert Dweck, M.D., and Hudson River HealthCare, Inc., are deemed to be employees of the United States under the Federal Tort Claims Act.

Dated: New York, New York  
March 28, 2008

  
MICHAEL J. GARCIA *for*  
United States Attorney  
Southern District of New York